

1 if true, could entitle Defendant to relief, an evidentiary
2 hearing should be held. See Vaillancourt v. Warden, 90 Nev. 431,
3 432 (1974) and Hatley v. State, 100 Nev. 214, 217 (1984) ("An
4 evidentiary hearing was necessary to determine the truth of
5 appellant's alternate contention that even if the arresting
6 officers were aware of the existence of the misdemeanor bench
7 warrant at the time of appellant's arrest, they were nevertheless
8 using it as a pretext to arrest appellant on a burglary charge").

9 Federal cases decided by the United States Court of Appeals
10 are in accord with Hatley. In United States v. Espinoza, 866
11 F.2d 1067, 1069 (9th Cir. 1988), the court said, "this court has
12 held on several occasions that when the prisoner's allegations of
13 a coerced plea are based on alleged occurrences outside the
14 record, an evidentiary hearing is required."

15 DAVIS has alleged that his understanding of the plea bargain
16 was not what the record reflects and, in addition, has alleged
17 that officers read him his rights after he was questioned (proper
18 person petition exhibit P-1 at page 17). If these allegations
19 are true, petitioner would be entitled to relief.

20 To meet the first prong of the two part test under
21 Strickland v. Washington, 466 U.S. 668 (1986), defendant must
22 show that counsel's advice was not within the range of competence
23 demanded of attorneys in criminal cases. See Hill v. Lockhart,
24 474 U.S. at 56 (quoting McMann v. Richardson, 397 U.S. 771).

25 Here, the attorney failed to note his client was a juvenile
26 and failed to move to dismiss an improper robbery charge.

27 To meet the second prong of the test, defendant must show
28 that there is a "reasonable probability that, but for counsel's

1 errors, defendant would not have pleaded guilty and would have
2 insisted on going to trial." Hill v. Lockhart, 474 U.S. 52
3 (1985).

4 Here, DAVIS alleged that his attorney failed to remove the
5 prime reason for his guilty plea: the wrongful robbery charge,
6 failed to investigate the case sufficiently to learn defendant's
7 age, and failed to interpose a motion to dismiss which any
8 attorney of competence would have interposed. Under those
9 circumstances, since defendant's proper person petition states he
10 would "plead anew," it would mean he would plead not guilty.

11 Thus, Defendant is entitled to an evidentiary hearing.

12 CONCLUSION

13 Wherefore, counsel requests that Mr. Davis be scheduled for
14 an evidentiary hearing during which counsel can quickly question
15 the arresting officers and defendant. Counsel also requests that
16 his client be released for being unlawfully deprived of a direct
17 appeal.

18 DATED: 10/1/99

19 By:

20 
21 ANDRES RAPPARD, ESQ.,
22 Attorney at Law
23 Nevada Bar Number 003892
24 ANDRES R. RAPPARD, CHTD.,
A Professional Corporation
633 South Fourth Street, Suite 8
Las Vegas, Nevada 89101
(702) 388-1772
Attorney for Defendant
JIMMIE DAVIS

25 CERTIFICATE OF SERVICE BY MAIL

26
27 I, Michael J. Sullivan, hereby certify that I am an employee
28 of the Law Offices of Andres Rappard and that on October 13,

1 1995, I mailed a true copy of the foregoing to:

2 Mr. Melvyn T. Harmon,
3 Chief Deputy District Attorney
4 200 South Third Street
5 Las Vegas, Nevada 89155

6 by placing said copy in the "D.A." incoming mailbox located at
7 the office of the District Court Clerk for the County of Clark.

8
9
10 DATED: / /

1 Case No. C85078
2 Dept. No. IV
3 DOCKET C

6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE

7 STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

8 JIMMIE DAVIS,)
9 Petitioner.)
10 v.)
11 WARDEN E.K.MCDAN EL,)
12 OF ELY STATE PR ON,)
13 Respondent.)

PETITION FOR
WRIT OF HABEAS CORPUS
(POST-CONVICTION)

DATE OF HEARING:
TIME OF HEARING:

14 INSTRUCTIONS:

15 (1) This petition must be legibly handwritten or typewritten,
16 signed by the petitioner and verified.

17 (2) Additional pages are not permitted except where noted or
with respect to the facts which you rely upon to support your
18 grounds for relief. No citation of authorities need be furnished
If briefs or arguments are submitted, they should be submitted in
the form of a separate memorandum.

19 (3) If you want an attorney appointed, you must complete the
Affidavit in Support of Request to Proceed in Forma Pauperis. You
20 must have an authorized officer at the prison complete the certi-
ficate as to the amount of money and securities on deposit to your
21 credit in any account in the institution.

22 (4) You must name as respondent the person by whom you are
confined or restrained. If you are in a specific institution of
the department of prisons, name the warden or head of the institu-
23 tion. If you are not in a specific institution of the department
but within its boundaries, name the director of the department of
24 prisons.

25 (5) You must include all grounds or claims for relief which
you may have regarding your conviction or sentence. Failure to
raise all grounds in this petition may preclude you from filing
future petitions challenging your conviction and sentence.

26 (6) You must allege specific facts supporting the claims in
the petition you file seeking relief from any conviction or sen-
tence. Failure to allege specific facts rather than just conclus-
27 ions may cause your petition to be dismissed.

POLICE DEPARTMENT
City of North Las Vegas
1301 East Lake Mead Blvd.

Date: 08-01-88

PRIOR TO ANY QUESTIONING, YOU MUST UNDERSTAND THE FOLLOWING RIGHTS

1. You have the right to remain silent.
 2. Anything you say can be used against you in a court of law.
 3. You have the right to the presence of an attorney prior to any questioning.
 4. If you cannot afford an attorney, one will be appointed to you prior to any questioning if you so desire.
- If you wish to waive all of the above rights, and answer questions now without an attorney present, you have the right to stop answering questions at any time during the interview.

DO YOU UNDERSTAND FULLY WHAT YOU HAVE BEEN TOLD: Ans: Yes Sign: Jimmie Davis

WAIVER

I can read and write the English language and I have read and understand the statement of my rights as shown above. I understand that I have the right to remain silent, that anything I say can be used against me in a court of law, that I have the right to the presence of an attorney before any questioning, that if I cannot afford an attorney one will be appointed to me prior to any questioning, if I so desire.

I hereby waive my rights as shown above and I am willing to answer questions and make a formal statement.

I understand and know what I am doing. No promises or threats have been made to me and no pressure of any kind has been used against me.

Signed: Jimmie Davis

Witness: Det. Adams

Witness: _____

I, Jimmie Davis, first having been duly informed of my rights by Det. Adams, as shown above, do hereby make the following statement freely and voluntarily and without promises of immunity or reward. My name is Jimmie Davis. I am 16 years of age. I reside at 25 Britz #B, my phone number is 649-7270.

I'm Det. Adams, I'm investigating a homicide that occurred on 07-31-88 at 25 Britz #B. I'm interviewing Jimmie Davis, black male, sixteen years old. Also in the interview is Jimmie Davis's uncle, Webster Davis. Jimmie, at approx. 5:15 PM last date would you tell us where you were at?

A: at the apt. 25 Britz Cir #B where the woman was shot.

Q: Would you tell us who was in the apt. with you?

A: Arthur, Ringo.

Q: Do you know Arthur's last name?

A: I don't know his last name? —

EXHIBIT C

Q: Does he have a nickname?

A: Yes, Junior. X

1 . (7) When the petition is fully completed, the original and
2 one copy must be filed with the clerk of the state district court
3 for the county in which you are imprisoned or restrained of your
4 liberty. One copy must be mailed to the respondent, one copy to
5 the attorney general's office, and one copy to the district
attorney of the county in which you were convicted or to the
original prosecutor if you are challenging your original conviction
or sentence. Copies must conform in all particulars to the
original submitted for filing.

6 (8) This form is not intended to, and does not, preclude
7 your right to file for post-conviction relief in the district
court for the county from which you were convicted in the State of
8 Nevada under the provisions of NRS 177.325. You will be precluded,
however, from filing a petition pursuant to chapter 177 of NRS if
9 you do not file it within 1 year after your conviction or decision
on appeal and cannot show good cause for failing to file within
that time. You are precluded from filing a habeas corpus petition
pursuant to chapter 34 of NRS if you do not first challenge your
conviction or sentence by filing a petition pursuant to chapter
177 of NRS.

11

12 PETITION

13 1. Name of institution and county in which you are presently
14 imprisoned or where and how you are presently restrained of your
15 liberty: ELY STATE PRISON, WHITE PINE COUNTY

16

17 2. Name and location of court which entered the judgment of
18 conviction under attack: EIGHTH JUDICIAL DISTRICT COURT DEPART-
19 MENT IV, LAS VEGAS NEVADA

20 3. Date of judgment of conviction: DECEMBER 12, 1988

21 4. Case number: C85078

22 5. (a) Length of sentence: LIFE WITHOUT THE POSSIBILITY OF
23 PAROLE.

24 (b) If sentence is death, state any date upon which execution
25 is scheduled: X

26 6. Are you presently serving a sentence for a conviction
27 other than the conviction under attack in this Motion?

28 Yes _____ No X

1 If "yes," list crime, case number and sentence being served at
2 this time: X

3 _____
4 _____
5 7. Natur. of offense involved in conviction being challenged:
6 FIRST DEGREE MURDER/ROBBERY WITH THE USE.
7 _____
8 _____

9 8. What was your plea? (check one)

10 (a) Not guilty (b) Guilty X (c) Nolo contendere
11 _____
12 _____

13 9. If you entered a guilty plea to one count of an indictment or information, and a not guilty plea to another count of an indictment or information, or if a guilty plea was negotiated, give details: Defendant pled guilty to first degree murder and stipulate to life without the possibility of parole in return for the robbery to be dropped
14 _____
15 _____

16 10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

17 (a) Jury (b) Judge without a jury
18 _____
19 _____

20 11. Did you testify at the trial? Yes No
21 _____
22 _____

23 12. Did you appeal from the judgment of conviction?
24 Yes No
25 _____
26 _____

27 13. If you did appeal, answer the following:

28 (a) Name of court: _____
29 _____
30 _____

31 (b) Case number or citation: _____
32 _____
33 _____

34 (c) Result: _____
35 _____
36 _____

37 (d) Date of result:
38 (Attach copy of order or decision, if available.)
39 _____
40 _____

41 14. If you did not appeal, explain briefly why you did not:
42 _____
43 _____
44 _____

1
2 15. Other than a direct appeal from the judgment of conviction
and sentence, have you previously filed any petitions, applica-
3 tions or motions with respect to this judgment in any court, state
or federal?

4 Yes X No _____

5 16. If your answer to No. 15 was "yes," give the following
6 information:

7 (a) (1) Name of court: DISTRICT COURT CLARK COUNTY NEVADA
8 Department IV/ In the supreme court of the state of Nevada.

9 (2) Nature of proceeding: Petition for post conviction relief
10 motion to vacate sentence.

11
12 (3) Grounds raised: Plea of guilty was not knowingly and volun-
13 tarily entered petitioner's sentence of life without was violative
14 of the cruel and unusual punishment/ineffective assistance of
15 counsel.

16
17 (4) Did you receive an evidentiary hearing on your petition,
18 application or motion? Yes _____ No X

19 (5) Result: Denied

20 (6) Date of result: March 25, 1992

21 (7) If known, citations of any written opinion or date of
22 orders entered pursuant to such result: None known

23
24 (b) As to my second petition, application or motion, give
25 the same information:

26 (1) Name of court: DISTRICT COURT CLARK COUNTY DEPT IV

27 (2) Nature of proceeding: MOTION TO VACATE SENTENCE

1 (3) Grounds raised: defendants presence report contained
2 materially inaccurate information.

3
4
5
6 (4) Did you receive an evidentiary hearing on your petition,
7 application or motion? Yes _____ No X

8 (5) Result DISMISSED

9 (6) Date o result: 7/3/95

10 (7) If known, citations of any written opinion or date of
11 orders entered pursuant to each result: N/A

12
13 (c) As to any third or subsequent additional applications or
motions, give the same information as above, list them on a
14 separate sheet and attach.

15 (d) Did you appeal to the highest state or federal court
having jurisdiction, the result or action taken on any petition,
16 application or motion?

17 (1) First petition, application or motion? Yes X No _____

18 Citation or date of decision: 1/24/94

19 (2) Second petition, application or motion? Yes _____ No X

20 Citation or date of decision: X

21 (3) Third or subsequent petitions, applications or motions?

22 Yes _____ No _____

23 Citation or date of decision: _____

24 (e) If you did not appeal from the adverse action on any
petition, application or motion, explain briefly why you did not.
25 (You must relate specific facts in response to this question.
Your response may be included on paper which is 8 1/2 by 11 inches
26 attached to the petition. Your response may not exceed five hand-
written or typewritten pages in length.)

27

28 HAD TO FILE WRIT OF HABEAS CORPUS WITHIN ONE YEAR.

1

2

3 17. Has an ground being raised in this petition been pre-
4 viously present i to this or any other court by way of petition
5 for habeas corp s, post-conviction relief pursuant to chapter 177
6 of NRS, motion : application? If so, identify:

7

8 (a) Which the grounds is the same: INEFFECTIVE ASSISTANCE
9 OF COUNSEL.

10

11

12 (b) The proceedings in which these grounds were raised:
13 POST CONVICTION RELIEF.

14

15

16 (c) Briefly explain why you are again raising these grounds.
17 (You must relate specific facts in response to this question.
18 Your response may be included on paper which is 8 1/2 by 11 inches
19 attached to the petition. Your response may not exceed five hand-
20 written pages in length.)

21 To have issue decided on its merits now presented befor the
22 court.

23

24

25

26 18. If an of the grounds listed in Nos. 23(a), (b), (c) and
27 (d), or listed on any additional pages you have attached, were not
28 previously presented in any other court, state or federal, list
29 briefly what grounds were not so presented, and give your reasons
30 for not presenting them. (You must relate specific facts in
31 response to this question. Your response may be included on paper
32 which is 8 1/2 by 11 inches attached to the petition. Your
33 response may not exceed five handwritten or typewritten pages
34 in length.)

35

36 Plea induced by prosecuting attorney through coecion, trickory
37 threats. Const. violation. Conviction obtained by use(contd.pg. 10)

38

39

40

41

42

43

44

45

46 19. Are you filing this petition more than 1 year following
47 the filing of the judgment of conviction or the filing of a
48 decision on direct appeal? If so, state briefly the reasons for
49 the delay. (You ust relate specific facts in response to this
50 question. Your response may be included on paper which is 8 1/2
51 by 11 inches att ied to the petition. Your response may not
52 exceed five hand itten or typewritten pages in length.)

1 . Petitioner filing within one year of judgement by the nevada
2 suprem cour:

3 20. Do you have any petition or appeal now pending in any
4 court, either state or federal, as to the judgment under attack?

5 Yes _____ No X

6 If yes, state what court and the case number: _____

7 21. Give the name of each attorney who represented you in
8 the proceeding resulting in your conviction and on direct appeal:

9 (David Gibson/Stephen Dahl/public defender) Elizabeth McMahon

10 Mark B.Bailous

11 22. Do you have any future sentences to serve after you complete
12 the sentence imposed by the judgment under attack?

13 Yes _____ No X

14 If yes, state what court and the case number: _____

15 23. State concisely every ground on which you claim that you
16 are being held unlawfully. Summarize briefly the facts supporting
17 each ground. If necessary you may attach pages stating additional
18 grounds and facts supporting same.

19 (a) Ground one: Plea induced by prosecuting attorney
20 through coercion, trickery ,and threats. Const violation.

21 Supporting FACTS (Tell your story briefly without citing cases
22 or law.): Supporting facts on record, prosecuting statementspage

23) A plea of guilty can not stand where it(continued PG 11)

24 (b) Group two: Ineffective assistance of counsel a sixth
25 Amendment violation.

26 Supporting FACTS (Tell your story briefly without citing cases
27 or law.): Petitioner was denied effective assistance of counsel

1 from preliminary hearing to the sentencing. (continued page 14)
2
3

3 (c) Ground three: Conviction obtained by use of illegally
4 and corced confession. Miranda violation.

5 Supporting FACTS (Tell your story briefly without citing cases
6 or law.): Petitioner was never read his miranda rights prior to
7 his arrest. defendant was arrested on august 1, (continued page 17)
8

9 (d) Group four:

10
11 Supporting FACTS (Tell your story briefly without citing cases
12 or law.):

13
14 WHEREFORE, petitioner prays that the court grant petitioner
15 relief to which he may be entitled in this proceeding.

16 EXECUTED at _____ on the _____ day of
17
18 _____, 19 _____.
19

20 Signature of attorney (if any) Signature of petitioner
21

22 Attorney for petitioner Address
23

Address

24
25 VERIFICATION

26 Under penalty of perjury, the undersigned declares that he
27 is the petitioner named in the foregoing petition and knows the
28 contents thereof; that the pleading is true of his own knowledge,

1 except as to those matters stated on information and belief, and
2 as to such matters he believes them to be true.

3
4 Petitioner
5
6

7 Attorney for petitioner
8

9
10 CERTIFICATE OF SERVICE BY MAIL

11 I, _____, hereby certify pursuant to
12 N.R.C.P. 5(b), that on this _____ day of _____,
13 19_____, I mailed a true and correct copy of the foregoing PETITION
14 FOR WRIT OF HABEAS CORPUS addressed to: To MS LORETTA BOWMAN
15 200 SOUTH THIRD STREET
16 P.O.BOX 551601
17 LAS VEGAS, NV 89155-1601

18
19 Warden E.K. McDaniel
20 Respondent prison or jail official
21 P.O.BOX 1911; E.S.P
22 ELY NEVADA 89301

23 Address _____
24

25 Attorney General
26 Heroes' Memorial Building
27 Capitol Complex
28 Carson City, Nevada 89710

29 Stewart L. Bell
30 District Attorney of County of Conviction
31 200 S THIRD ST STE 701
32 PO BOX 552212
33 LAS VEGAS NV 89155-2212
34

35 Address _____
36

37
38 Signature of Petitioner
39

1 (continued fr . page 6-Q)

2 of illegal obtained confession. miranda violation.

3 Filling to exhaust state remedys filed within 1 year of judg-
4 ment by the Nevada supreme Court that court appointed attorney
5 Mark B. Bailous would not raise but told defendant to raise them
6 on habeas Corpus petition within one year of judgement to exhaust
7 state remedys' so that you may proceed to federal court.

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SUPPORTING FACTS FOR GROUND I

(continued from page 7-A) is the coercion by the state: State told defendant if you plead guilty I will drop the robbery and will not pursue it any further but you must stipulate to the sentence of life without the possibility of parole but what he did not disclose was that defendant was illegally charged with robbery charge because he knew if robbery was used and to have been used in the plea negotiations the plea has been tainted , supported by states attorneys statements on record ID page 23.

Attorney for the state dropped robbery at the plea hearing and said it has not even considered but attorney for the defendant contradicts is on record when he states, My understanding was your honor ,; that the state will not go down and try to certify our client on the robbery charge and bring him back those charges will not be pursued any further ID page 24/15. Counsel for the defendant states this on Record.

Attorney for the state says that I do believe that counsel for the defendant will agree on the record that dismissal of count II in no way has anything to do with the negotiations and is not consideration. Counsel for the defendant never agrees to this on record before the judge dismisses the charge ID page 24. Because this was not true counsel told defendant that the negotiations were, he plead guilty and the robbery will be dropped and he stipulate to life without the possibility of parole and it will not be pursued any further. Counsel never agreed to this on record because he was under the same impression that the defendant was THAT the robbery was apart of the plea negotiations. which leaves the record bare of which plea agreement the defendant plead to the one proposed by the states attorney or the one proposed

1 by the defendants counsel?

2 When the sentencing judge heard this he should have inquired
3 deeper into the facts of wheather or not the robbery was used to
4 induce plea & threats of futher procection or was the robbery
5 not apart of the plea agreement and had defendants counsel
6 stipulate to this on record. Sentencing judge must develope
7 on record the factual basis for the guilty plea when it rest
8 in any signif_cants degree on a promise or agreement made by the
9 prosecutor, the essence of those promises must in some way be
10 made known so that the judge knows that it was not unfairly
11 obtained because if the defendant has been tricked by the proce-
12 cution through mis representation into pleading guilty then his
13 due process rights of the united states constituation has been
14 violated. Threatening to bring additional prosecution which is
15 clear renders plea voidable,prosecutor undercuts the basis for
16 the waiver of Constitutional rights implicit in the plea when
17 he makes fals statement on record. The most meticulous standards
18 of both promi : and performance must be met by prosecutors en-
19 gaging in plea bargainning, contradictory or confusing statements
20 of the law are not adquate when defendant is giving up precious
21 rights gareenteed by the United States Constitution.

22 The court should not have accepted the plea in light of the
23 misunderstanding which obviously existed of wheather defendant
24 was threatend with futher future prosocution or was the robbery
25 not considered. It is clear however from ccounsels statements
26 on record that the robbery was apart of the plea negotiations.

27 There shO d have been futher consulting with the court and
28 procectator and the defendants counsel in an effort to arrive at

1 an agreeable and legal plea negotiations after which the defendant
2 should have been able to inform the court as to the course
3 of action he wishes to take. It is the defendants rights who are
4 being violated when the plea agreement is broken or meaningless.
5 IT is his waiver which must be voluntary and knowing. He offers
6 that waiver not in exchange for the actual sentence or impact
7 on the judge, but for the prosecutors statements in court, if
8 they are not adequate the waiver is ineffective and a violation
9 of the United States Constituition. A plea of guilty shown to be
10 unfairly obtained or giving through ignorance, fear, coercion,
11 and or trickery can be vacated by the court.

12 For the grounds the defendant has set befor the court the
13 defendant Prays and hopes that the court will vacate the plea
14 and give the petitioner the opportunity to plead anew.

14 //
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SUPPORTING STATE FOR GROUND II

1 (countinued from page 7-B) At preliminary hearing counsel told
2 attorney for the state that defendant was 18 when in fact he
3 was 16 and because of this the attorney for the state proceeded
4 against defendant with an amended complaint charging defendant
5 with robbery with the useof a deadly weapon and defendant was
6 held to answer (ID page 23 attorney for the state statements
7 on record) : Befor I describe the negotiations I should INform
8 the court tha I do NOT believe thqt he is properly charged with
9 robbery with .se of a deadly weapon. At preliminary hearing
10 stage I init. ly believed him to be 16. One of his attorneys
11 Inadvertentl^y tokd me he was 18. Because of that I proceeded
12 against him with an amended complaint charging him with robbery
13 with the use of a deadly weapon and he was held to answer.)

14 For three months defendant stood charged illegally with
15 robbery in adult court. Counsel cannot have done any investi-
16 gation into defendants case if he told attorney for the state
17 this at preliminary hearing as the attorney for the state states
18 on record this fact.

19 If counse would have at least read defendants statements
20 to police whi n was used in and at preliminary hearing he would
21 have known t^r t defendant was 16 because it says this right on
22 top (IDpage 2 ____). Counsels statement no matter how inadvertent
23 did not lesso its impact because illigally charged robbery was
24 used in plea negotiations (ID page 24/25 Counsels statements:

25 Mr dahl:Thats correct, this plea is being made pursuant to
26 NRS 174.065, the party agrees to a degree of crime if theres
7 sepearte degrees of crime, and also in the case of murder sti-
pulate to a punishment less than death. A nd the other under-

1 standing is your honor that the state will not go down and try
2 to certify our client on the robbery and bring him back .those
3 charges will not be pursued any futher.)

4 These statements took place October 12 1988 2 and a half
5 months after counsel gave false statement to Attorney for the
6 state. In thi time period of two and a half months no motions
7 were filed t correct defendant from being charged in adult
8 court with th robbery charge when counsel new defendant was
9 only 16 because he came to visit him in juvenile tank in the
10 ccounty jail but he still did nothing but let the underlying
11 felony hang above defendants head then be used in plea nogotia-
12 tion which tainted plea,defence counsel as well as prosecution
13 counsel must know or learn about relevant law and evaluate its
14 application to his client with respect to plea bargain and
15 failure to do so will amount to constitutionall ineffective
16 assistance of counsel and undermine validity of plea.
17 Counsel never told defendant that he was illagally charged
18 with robbery if he had told defendant this and or filed motions
19 he would not ave been coerced tricked and threatend by state
20 to induce plea, he would have been given the opportunity to
21 fight certification and have robbery taken to juvenile court
22 or dropped by the state adult court when defendant had no violent
23 charges from the past or never being committed to Elko or
24 Spring mountain youth authorty this possibilty of defence was
25 there (ID page 23/24 attorney for the state statements on record:
26 (and as I understand the law nowalthough a person of any age can
27 originally be charged in adult court with murder ,for any other
28 crime even if committed during the murderous trans action he

1 has to be originally charged in juvenile court ,

2 THE COURT He has to be certified .)

3 Counsel's performance was deficient, counsel made errors so
4 serious that counsel could not have been functioning as the
5 counsel guaranteed the defendant by the sixth amendment if not
6 for these errors the end result of defendants case would have
7 been different because he would have not pleaded guilty and
8 stipulated to life without the possibility of parole, when a
9 plea agreement is discussed and hence sentencing becomes the
10 clients preeminent concern, it is incumbent on counsel to
11 acquaint himself with all the available alternatives and their
12 consequences for the defendants liberty and rehabilitation.
13 Counsel's lack of knowledge here is inexcusable.

14 Counsel failed to object when attorney for the state said
15 on record that the robbery was not apart of the plea negotiations
16 and is not considered (ID page 24) defendants statements on -
17 record contradicts this (ID page 25). Counsel has duty to
18 consult with defendant on important developments and decisions
19 in the course of the prosecution. Had counsel done this the
20 robbery would not have been used to induce plea.

21 Counsel cannot even be said to know if defendant can
22 read or write, when he said to court that he only had two years
23 of schooling ') PAGE 27) This should have been a factor but
24 was not. Defendant was not even given a psychological evaluation
25 giving his age and the severity of the crime this should have
26 applied but was not.

27

28

SUPPORTING STATEMENTS FOR GROUND III

(continued from page 8-C) 1988 prior to his arrest Defendant was not read his Miranda rights which constituted a violation of his fifth amendment right. Defendant was taken into one room where he was questioned with his uncle Webster leonard davis he then was taken into another room where no Miranda rights were read just like in the previous room except in the second room there was a typest present and his uncle,he then was questioned further and the typest typed everything that was said, the defendant and his uncle were then taken to the room from which they had started where they were asked to sign by the X and after this was done the defendant was then read his rights and placed under arrest and asked to empty his pockets, defendant was not read his rights and was not told that his statements would lead to adult prosecution in adult court.The next day defendant asked a black female gaurd when was he going to juvenile she in return asked him how old he was and the defendant replied she said you are not going to juvenile and walked off singing a church song The defendant asked the court for a discovery as to the female gaurd of african american nature who worked the morning of august 2,1988. The courts have held that it was entirely unconstitutional to carve out the fifth amendment and all statements by juveniles on the ground that these could not lead to criminal involvement the court thus granted juveniles the protection of adult statutes.Before any questions can be asked defendant is to be read his miranda rights,in this case before the court this was not done and defendant should be afforded the opportunity to call these witnesses to testify in the court of law as to these facts and to bring in a lye detector machine

1 for the arresting officer, defendant, and Webster Leonard Davis.

2 There is the question of: DO YOU UNDERSTAND FULLY WHAT YOU
3 HAVE BEEN TOLD.) AT THE top of the waiver, then you are to sign
4 YES or NO THE YOUR NAME, the defendant signed his name but he
5 did not sign as that he understood, the detective signed yes
6 (ID Page 26. the defendant did not because he did not under-
7 stand. The defendant can prove in the court of law that he didnot
8 sign YES or anything else but his name for a fact. Now this was
9 truly illegal for the detective to do because it is the defen-
10 dant who is giving up the rights not the detective.

11 A guilty plea cannot stand when it is obtained by use of an
12 illegally obtained confession. The detective testified that he
13 took the whole statement in one room but this was false because
14 Karen Payn sat and watched them go from one room to the other
15 and back again and can testify to this fact along with the defend-
16 ants uncle who was in each room with the defendant.
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1 DISTRICT COURT
2 CLARK COUNTY, NEVADA

3 JIMMIE DAVIS

4 Petitioner

V.

CASE NO.C85078
DEPT.NO IV
DOCKET "C"

5 THE WARDEN OF ELY STATE
6 PRISON E.K.MCDANIEL
7 Respondent

8 AFFIDAVIT IN SUPPORT OF
9 MOTION FOR WRIT OF HABEAS CORPUS

10 I JIMMIE DAVIS DO HEREBY swear under the penalty of perjury
11 that the assertions of this affidavit are true:

12 1 I am the above defendant in the entitled action.
13 2 I make his affidavit in support of my motion for writ
14 of habeas corpus.

15 3 That petitioner is competent to testify and therfor
16 would be able to do so if called upon to testify in the court of
17 law.

18 4 That petitioner is entitled to the relief sought.

19 5 That petitioner makes this affidavit in good faith.

20 6 That petitioner was denied due process of law

21 7 That petitioner was denied the effective assistance
22 of counsel at preliminary, during plea negotiations, and plea
23 hearing. counsel never explained to petitioner that the robbery
24 was not a part of the plea negotiations and that petitioner
25 was illegally charged.

26 8 That counsel was ineffective because he never talked to
27 defendants while about how the arrest was done and or if any
28 rights were read to defendant.

1 9 That defendant was not read his rights prior to his statements
2 to police.
3 10That defendant was taken into one room with his uncle and que-
4 stioned where no rights were read, he then was taken into another
5 room where on the way in the hallway his uncle spoke to a karen
6 Payn who came with him and said they would be ready to go in a
7 minute because she had some personal buisness to attend to so
8 she sat on the chair while they went into another room where a
9 female typed every thing that was said and no rights were read in
10 this room eat: r, they then were taken into the orignal room again
11 where the def: dant was asked to sighen by the X and thenread his
12 rights and to to empty his pockets he was under arrest for mur-
13 der. he gave t: e contents to his uncle and was cuffed.

12 11 Webster Leonard Davis and Karen Payn can testify to these facts
13 because webster Davis was with the defendant and Karen Payne was
14 in the hallway waiting for them and watched them go from one room
to the next, Durring which she talked to Leonard Davis.

15 12 Defendant did not Know he was being charged in adult court
16 with crime because the next day in the morning he asked a black
17 female Gaurd when was he going to juvenile and she asked him how
18 old he was and he told her he was 16 and she said you are not
19 going to juvenile and walked off singging a church song.

19 13that couns. was ineffective when he failed to explain that he
20 was illegally charged with the underlying feloney of robbery.

21 14 That defendant was denied effective assistance of counsel
22 when counsel g ve false statement to attorney for the state
23 about defendants age and he was held to answer for the ro-
24 bbery charge in adult court when he was suppose t: o be charged
25 in juvenile co:rt or certified as to the robbery charge .
26 facts supported by the record.and to all witnesses that should
27 be called to testify.

1 15 That defendant was told robbery would be dropped in return
2 for his plea of guilty and it is apart of the plea negotiations

3 16 That the record is bare of which plea agreement defe-
4 ndant pled guilty to , the one the attorney for the state
5 proposed or the one proposed by the defendants counsel

6 17 Attorney for the state misled defendants counsel and
7 defendant with a false plea aggreement and by stating on record
8 that robbery had nothing to do with the plea negotiations when
9 counsel for the defendant contradict thison record.

10 18That if counsel would have at least read the defendants
11 statements to the police at the preliminary hearing he would
12 have known that defendant was 16 because statement says it right
13 at the top therfor counseles ineffectivness made him unable
14 to make reasonable decesions for the defendants case when he
15 let defendant answer to the robbery charge in adult court.

16 19 That defendant believed he was rightfully charged with
17 robbery and would not have pleaded guilty if he would have
18 known he was illagly charged with the robbery

19 20Attorne; for the state and attorney for the defendant
20 coerced defendant into pleading guilty by letting the under
21 lying feloney hang above defendants head for which he was
22 illagly charged for 3to4 months and then used in plea nego-
23 tiations.

24 21That plea cannot stand when it is induced by coercion
25 trickory, or false promisesmade by the state or counsel for
26 the defendant.

27 22That defendant was told that prosocution will not per-
28 sue robbery charge futherand it is apart of the plea agree-

ment and negotiations in return for his plea of guilty.
23 that on [redacted] signed waiver at the top where it says DO YOU
UNDERSTAND [redacted]LY WHAT YOU HAVE BEEN TOLD THAT THE DEFENDANT
DID NOT write the word yes and the detective did when he cannot
do this because he is not the one giving up his rights.

JIMMIE DAVIS 27362

I the undersigned, hereby declare under the penalty of perjury, pursuant to NRS 208.165, that the foregoing is true and correct.

Execute this DAY OF 1995 at Ely state prison.

JIMMIE DAVIS 27362
P.O.BOX 1989 (ESP)
ELY NEVADA 89301

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4 THE COURT: C85087, State of Nevada
5 versus Jimmie Davis.

6 The record will show the
7 presence of the defendant; counsel, Mr. Gibson; Mr.
8 Jerbic for the State. This matter is on for initial
9 arraignment.

10 Did you receive a copy of the
11 information?

12 MR. GIBSON: Yes.

13 THE COURT: Do you wish to have it
14 read?

15 MR. GIBSON: No, we will waive that.

16 THE COURT: All right. Is Jimmie Davis
17 your true name?

18 THE DEFENDANT: Yeah.

19 THE COURT: How much schooling have you
20 had, Mr. Davis?

21 THE DEFENDANT: Two years.

22 THE COURT: Do you read, write, and
23 understand the English language?

24 THE DEFENDANT: Yeah.

25 THE COURT: All right. Have you been

1 LAS AS, CLARK COUNTY; WEDNESDAY OCTOBER 12, 1988
2

3 P R O C E E D I N G S

4

5 THE COURT: C85078, Jimmie Davis. The record
6 will show the presence of the defendant, his counsel, Mr.
7 Gibson and Mr. Dahl, and Mr. Henry for the State.

8 Mr. Henry.

9 MR. HENRY: Your Honor, we have a proposed
10 resoluti... The defendant right now stands charged in an
11 Informati n with two counts, murder with use of a deadly
12 weapon a : robbery with use of a deadly weapon. Before I
13 describe the negotiations I should inform the court that I
14 do not believe that he is properly charged with robbery with
15 use of a deadly weapon. At the preliminary hearing stage I
16 initially believed him to be 16. One of his attorneys
17 inadvertently told me he was 18. Because of that I
18 proceeded against him with an amended complaint charging him
19 with rob ery with use of a deadly weapon and he was held to
20 answer.

21 After he was held to answer I've had
22 discussi s with his counsel and conducted some
23 investigation and I believe him to be 16. And as I
24 understand the law now although a person of any age can
25 originally be charged in the adult courts with murder, for

1 any other crime even if it was committed during the
2 murderous transaction he has to be charged originally in
3 juvenile court.

4 THE COURT: He has to be certified.

5 MR. HENRY: Therefore initially I'd move to
6 dismiss Count II and I want the record to reflect and I
7 believe that his counsel will agree on the record that the
8 dismissal of Count II in no way has anything to do with the
9 negotiation and is not consideration.

10 Having said that --

11 THE COURT: That's jurisdictional.

12 MR. HENRY: Yes.

13 THE COURT: I will grant that motion. Count II
14 is ordered dismissed for that reason.

15 MR. HENRY: Having said that, the proposed
16 negotiation would be that the defendant plead to first
17 degree murder without the use of a deadly weapon as a lesser
18 included offense of Count I and stipulate that the
19 punishment for that first degree murder would be life
20 without the possibility of parole in the Nevada State
21 Prison.

22 MR. DAHL: That's correct. This plea is being
23 made pursuant to N.R.S. 174.065, the party agrees to a
24 degree of crime if there's separate degrees of crime, and
25 also in the case of murder stipulate to a punishment less

1 than dead . And the other understanding is, Your Honor,
2 that the State will not go down and try to certify our
3 client on the robbery and bring him back. Those charges
4 will not be pursued any further.

5 THE COURT: All right. Mr. Davis, did you hear
6 what's been said?

7 THE DEFENDANT: Yes.

8 THE COURT: And are you in agreement with
9 what's been said?

10 THE DEFENDANT: Yes.

11 THE COURT: Those negotiations, you've
12 discussed these with your lawyers Mr. Gibson and Mr. Dahl?

13 THE DEFENDANT: Yes.

14 THE COURT: And there is no one who is forcing
15 you to do this, to enter a plea of guilty, are they?

16 THE DEFENDANT: No.

17 THE COURT: With respect to Count I is there
18 going to be any amended pleading filed?

19 MR. HENRY: Your Honor, I had not prepared one.
20 I just have to strike the penalty allegation, the penalty
21 enhancement allegation of use of a deadly weapon.

22 THE COURT: That will be the order then.

23 As to Count I charging you with murder, what is
24 your plea?

25 THE DEFENDANT: Guilty.

FILED

1 ORDR
2 STEWART L. BELL
3 DISTRICT ATTORNEY
Nevada Bar #000477
3 200 S. Third Street
Las Vegas, Nevada 89155
4 (702) 455-4711
Attorney for Plaintiff

MAR 4 1999
Clerk's Office
CLARK CO.

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,)
8 Plaintiff,)
9 -vs-) Case No.. C85078
10 JIMMIE DAVIS,) Dept. No. IV
#0854767) Docket C
11)
12 Defendant(s).)
13 _____)

14 ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS
15 (POST-CONVICTION)

16 DATE OF HEARING: 1-24-96
TIME OF HEARING: 9:00 A.M.
17

18 THIS CAUSE having come on for hearing on the 24th day of January, 1996, the Petitioner being
19 present, represented by ANDRES RAPPARD, ESQ., the Respondent being represented by STEWART
20 L. BELL, District Attorney, by and through DAVID J.J. ROGER, Chief Deputy District Attorney, and
21 the Court having heard oral arguments of counsel, the Court took this matter Under Advisement. Based
22 upon the following discussion, Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction) is
23 hereby denied.

24 STATEMENT OF THE CASE

25 Jimmie Davis, (hereinafter referred to as "Defendant"), was arrested August 1, 1988, in
26 connection with the shooting death of Brittain Gelabert. A preliminary hearing was held August 25
27 1988, and Defendant was bound over to District Court. On September 8, 1988, an Information was filed
28 charging Defendant with one count MURDER WITH USE OF DEADLY WEAPON (Felony - NR

1 200.010, 200.030, 193.165); and one count ROBBERY WITH USE OF DEADLY WEAPON (Felony -
2 NRS 200.380, 193.165).

3 On October 12, 1988, following negotiations with the District Attorney, Defendant pled guilty
4 to FIRST DEGREE MURDER and stipulated to Life without parole. On December 20, 1988, Judgment
5 of Conviction (Plea) was entered and Defendant was sentenced to Life in the Nevada State Prison
6 without the possibility of parole.

7 On December 20, 1989, Defendant and appointed counsel, Mark Bailus, filed Defendant's first
8 Petition for Post-Conviction Relief alleging *inter alia*: 1) involuntary entry of guilty plea, and 2)
9 ineffective assistance of counsel. On April 15, 1992, this Court denied Defendant's petition and an appeal
10 was taken. On January 24, 1995, the Nevada Supreme Court dismissed Defendant's appeal in Case No.
11 23338.

12 On September 9, 1995, Defendant filed a second pro per Petition for Writ of Habeas Corpus
13 (Post-Conviction) along with a pro per Motion for Appointment of Counsel. On September 27, 1995,
14 the district court granted Defendant motion to appoint counsel, and subsequently defense counsel filed
15 a First Amended Petition for Writ of Habeas Corpus.

STATEMENT OF THE FACTS

16 On July 31, 1988, the Defendant and two (2) friends, Arthur Cullins and Ringo, were located at
17 25 Britz Circle Apt. B, North Las Vegas, Nevada. The apartment has a reputation among residents as
18 a "hangout" for drug transactions and other illicit activities. At about 5:30 p.m., the young men were
19 approached by the victim, Brittain Gelabert, who wanted to sell a .38 caliber Smith and Wesson revolver
20 for \$100.00.

21 Brittain removed the gun and several bullets from her purse and placed them on the counter top.
22 The Defendant picked up the gun, opened the cylinder, loaded it, pointed the gun at Brittain, and
23 demanded she lower the price. To Brittain's detriment, she refused. The Defendant then decided to keep
24 the gun without paying for it and told Brittain to leave. When Brittain again refused, the Defendant shot
25 her (Def's District Court file statement of the Defendant).

26 Forensic Pathologist, Sheldon Green, testified at the Defendant's preliminary hearing that Brittain
27 died from a single bullet wound to the right chest area, fired from "some distance." (Def's Preliminary

¹ || Hearing Trans. at 27).

DECISION

3 Ground One, alleges the Defendant's guilty plea was the coerced result of an improperly filed
4 robbery charge. Defendant claims he should be permitted to withdraw his plea because the proceedings
5 were tainted. The voluntary nature of Defendant's plea has previously been decided on the merits and
6 is the Law of the Case. (Exhibit "A" - Order Dismissing Appeal).

The Nevada Supreme Court has determined that all claims which have previously been heard and decided on the merits cannot be revisited in a subsequent appeal based on the Doctrine of the Law of the Case. The ruling in the first instance becomes the law of the case for all subsequent proceedings. Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975); Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994) (Law of the Case applies to Petitions for Writ of Habeas Corpus).

12 Also, Defendant's allegation that his guilty plea was the result of an improperly filed robbery
13 charge is contrary to the record. The record clearly states the District Attorney was initially under the
14 mistaken belief that the Defendant was an adult. Once the District Attorney was made aware of the
15 Defendant's correct age, 16, the robbery charge was dismissed for lack of District Court jurisdiction. The
16 District Attorney affirmatively stated the dismissal of said robbery charge was not a part of the
17 negotiations. The State did however acquiesce to an agreement not to pursue said charge in Juvenile
18 Court (Exhibit "B" - Transcript of Def's Plea at 117-119). This course of action is consistent with plea
19 negotiations and Defendant's plea was not the result of improper influence. Schmidt v. State, 94 Nev.
20 665, 666, 584 P.2d 695, 696 (1978).

21 Ground Two, alleges defense counsel was ineffective for failing to file a motion to dismiss the
22 robbery charge which was improperly filed in District Court.

23 The Defendant's argument is meritless because the robbery charge was in fact dismissed by the
24 District Attorney prior to the taking of Defendant's plea and was not a part of the negotiations.
25 Defendant fails to show prejudice or how counsel's performance was deficient and therefore this
26 allegation is dismissed. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); Warden v.
27 Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

28 Defendant's pro per petition alleges his conviction was obtained by the use of an illegally coerced

1 confession. In its first response, the State raised the procedural bar of NRS 34.810, which reads:

2 1. The court shall dismiss a petition if the court
3 determines that:

4 (a) The petitioner's conviction was upon a plea
5 of guilty and the petition is not based upon an allegation
6 that the plea was involuntarily or unknowingly entered
7 or that the plea was entered without effective assistance
8 of counsel.

9 (Emphasis added).

10 Defendant's First Amended Petition alleges this court should decide the issue on the merits
11 because procedural bars are not regularly and strictly enforced. Defendant's argument is meritless
12 because procedural bars are routinely enforced. Marshall v. State, 110 Nev. 1328, 1331 n.1, 885 P.2d
13 603, 605 n.1 (1994); Hogan v. State, 109 Nev. 952, 959, 860 P.2d 710, 715 (1993); Phelps v. Director,

14 Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988).

15 The decision whether to employ the procedural bar is not a discretionary matter. The plain
16 language of the statute directs that the court "shall" dismiss claims which do not fall within the statute.
17 The State legislative intent is clear. Therefore, this allegation is dismissed.

18 Defendant claims the procedural bar of NRS 34.810 (2) does not apply because the issues
19 presented are sufficiently different. The statute reads:

20 A second or successive petition must be
21 dismissed if the judge or justice determines that it fails
22 to allege new or different grounds for relief and that the
23 prior determination was on the merits or, if new or
24 different grounds are alleged, the judge or justice finds
25 that the failure of the petitioner to assert those grounds
26 in a prior petition constituted abuse of the writ.

27 (Emphasis added).

28 The Court finds that Defendant's allegations are not sufficiently different to justify relitigating the
29 same issues. Further, those issues which are sufficiently different constitute a "piecemeal approach,"
30 Darnell v. State, 98 Nev. 518, 521, 654 P.2d 1009, 1011 (1982), and an abuse of the writ.

31 Over the past seven (7) years, Defendant has been provided every opportunity to fairly contest
32 the validity of his conviction. The Nevada Supreme Court has stated, "At some point, we must give
33 finality to criminal cases" Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). The
34 defendant shall not file another petition for writ of habeas corpus without prior permission of this court.

1 Defendant next alleges his case was prejudiced because he never consented to waive his right to
 2 a direct appeal. Assuming Defendant was denied this right, the Defendant's remedy is to pursue post-
 3 conviction relief; which he has twice been permitted to do. Defendant's contention that he should be
 4 released (Def's First Amend Pet. at 7), is unwarranted and contrary to Nevada Law.

5 A defendant's right to a direct appeal is not constitutional, Castillo v. State, 106 Nev. 349, 792
 6 P.2d 1133 (1990), but statutory, NRS 177.015(3). When a defendant is deprived of this right, review
 7 by the Nevada Supreme Court is lost and prejudice is presumed. Fawaz v. State, 105 Nev. 682, 783 P.2d
 8 425 (1989).

9 Recently the Nevada Supreme Court addressed this very situation in Lozada v. State, 110 Nev.
 10 349, 871 P.2d 944 (1994). The High Court determined the appropriate remedy when a defendant is
 11 denied the right to a direct appeal is to raise any issues, which could have been raised on direct appeal,
 12 in a petition for post-conviction relief. The Court's opinion stated:

13 If [defendant] can establish his claim that he was denied
 14 his right to effective assistance of counsel on appeal,
 15 which had the effect of denying [defendant] his right to
 16 appeal, the appropriate remedy would be to allow
[defendant] an opportunity to raise in a petition for a
writ of habeas corpus any issues which he could have
raised on direct appeal . . .

17 A complete remedy will exist, however, only if
 18 the district court grants [defendant] counsel to assist
 19 him in the preparation of a petition for a writ of habeas
 20 corpus.

21 *Id.* at 359, 871 P.2d at 950 (emphasis added).

22 The Defendant has twice been permitted to raise issues in petitions for post-conviction relief and
 23 in both instances counsel has been appointed to assist him. Evitts v. Lucey, 469 U.S. 387, 394, 395, 105
 24 S.Ct. 830, 834, 835 (1985). The Defendant has been afforded every right available under Lozada and
 25 his contention that he be released is meritless.

26 The Court has reviewed the record in this case. The Defendant entered into a plea bargain with
 27 the State. He was sentenced by the Court in accordance with the plea bargain.

28 Defendant has failed to identify any additional issues that he would have raised on direct appeal.
 Likewise, this Court's review of the record establishes that there are no legitimate issues resulting from
 his plea and sentence. Therefore, this claim for relief is denied.

1 Next, Defendant claims that he is entitled to relief because his confession was taken in violation
 2 of Miranda. The United States Supreme Court has held that a confession taken in violation of Miranda
 3 v. Arizona, 384 U.S. 436, 86 S.Ct. 1602 (1966) may not be used as substantive evidence against the
 4 defendant. However, a Miranda violation does not bar further prosecution. Id. at 479, 86 S.Ct. at 1630.
 5 The Defendant's request for relief is meritless because Defendant waived his right to raise this issue by
 6 virtue of his guilty plea. Cline v. State, 90 Nev. 17, 518 P.2d 159; Warden v. Lyons, 100 Nev. 430, 683
 7 P.2d 504 (1984).

8 Also, even if a Miranda violation did occur, Defendant is unable to show prejudice because the
 9 State never proffered the statement. Defendant's allegation is without legal support and it is hereby
 10 dismissed.

11 Defendant's final claim alleges counsel was ineffective for failing to move for dismissal of an
 12 improper robbery charge. This allegation is without merit because, as has been previously discussed, said
 13 robbery charge was dismissed and was not used by the prosecution as leverage during the plea
 14 negotiations (Exhibit "B" - Transcript of Def's Plea at 117-119).

15 Defendant's allegation "that his attorney failed to remove the prime reason for his guilty plea: the
 16 wrongful robbery charge" (Def's First Amend Pet. at 9) (emphasis added), is patently disingenuous. In
 17 return for Defendant's guilty plea to FIRST DEGREE MURDER, the State agreed not to seek the death
 18 penalty and to drop the deadly weapon enhancement. This court finds that is is incredible that
 19 Defendant's "prime reason" for negotiating a plea was to avoid a robbery charge when the full extent of
 20 the law exposed the Defendant to death penalty, or at least a consecutive life sentence on the use charge.

21 It is readily apparent Defendant is attempting to attack the voluntary nature of his plea because
 22 his present circumstances, serving a life sentence without the possibility of parole, suggest he has nothing
 23 to lose by playing the "new trial lottery." Such attacks on properly negotiated pleas clog the already
 24 burdened judicial calendar and attempt to circumvent justice.

25 Obviously it was the overwhelming evidence of guilt, the possibility of the death sentence, and
 26 the deadly weapon enhancement which motivated the Defendant to plead guilty; not the robbery charge.
 27 The record is clear that the robbery charged was dismissed prior to the Defendant entering his plea and,
 28 despite what he may say from his cell, the evidence clearly indicates he would not have wanted to go to

1 trial. Hill v. Lockhart, 474 U.S. 52, 61, 106 S.Ct 366, 371 (1985); see Warden v. Lyons, 100 Nev. 430,
2 683 P.2d 540 (1984)

3 ORDER

4 THEREFORE, IT IS HEREBY ORDERED that the Defendant's Petition for Writ of Habeas
5 Corpus (Post-Conviction) shall be, and it is, hereby denied.

6 DATED this 29th day of February, 1996.

7 
8 DISTRICT JUDGE SLB
9

10 STEWART L. BELL
11 DISTRICT ATTORNEY
Nevada Bar #000477

12
13 BY David J.J. Roger
14 DAVID J.J. ROGER
Chief Deputy District Attorney
Nevada Bar #002781
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1 CASE NO. C88618
2 DEPT. NO. IV
3 DOCKET C

FILED

MAR 1 3 28 PM '96

5
6 IN THE E JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF CLARK

8 * * * * *

9 JULIE DAVIS,)
10 Petitioner,)
11 vs.)
12 THE STATE OF NEVADA,)
13 Respondent.)
14

NOTICE OF APPEAL

15 Notice is hereby given that, JULIE DAVIS,
16 Petitioner in the above entitled action, hereby appeals to the
17 Nevada Supreme Court from the District Court's Order denying
18 Petitioner's W^HIT OF M^HB^EH^S C^OR^PUS, entered in
19 this action on the 24 day of FEBRUARY, 1996.

20 DATED this 3 day of MARCH, 1996.

JULIE DAVIS 27362
JULIE DAVIS 27362
PETITIONER IN PRO PER
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301

25 D R P 1478

26 111 : 1 : 8

27 ATC

UCJL

JIMMIE DAVIS 7362
PO BOX 607
CARSON CITY NV ADA
89702

1 District Court
2 CLARK COUNTY, NEVADA

3 JIMMIE DAVIS

4 Petitioner,

CASE NO. C85078

5 v

DEPT NO. IV

6 THE STATE OF NEVADA,

7 Respondent.

8

9 MOTION TO CORRECT ILLEGAL SENTENCE

10 (NRS 176.555)

11 COMES NOW THE PETITIONER, JIMMIE DAVIS, IN PROPER PERSON AND
12 RESPECTFULLY SUBMITS THIS MOTION TO CORRECT ILLEGAL SENTENCE PURSUANT
13 TO NRS 176.555.

14 THIS MOTION IS MADE AND BASED UPON THE FILES AND RECORDS OF THE
15 ABOVE ENTITLED CAUSE OF ACTION AND THE ATTACHED MEMORANDUM OF POINTS
16 AND AUTHORITIES.

17 DATED THIS 26 DAY OF APRIL 1997.

18 *Jimmie Davis 27362*
19 JIMMIE DAVIS 27362
20 PO BOX 607
21 CARSON CITY NEVADA
22 89702